



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2019-0085]

Hours of Service of Drivers: National Waste & Recycling Association; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application from the National Waste & Recycling Association (NWRA) requesting an exemption from one of the criteria for using the “short-haul – 100 air-mile radius driver” exception to the requirement for the preparation and retention of records of duty status (RODS). NWRA asks that all short-haul commercial motor vehicle (CMV) drivers in the waste and recycling industry be allowed up to 14 hours (instead of the current 12 hours) to return to the original work reporting location without losing their short-haul status. FMCSA requests public comment on NWRA’s application for exemption.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA-2019-0085 by any of the following methods:

- Federal eRulemaking Portal: www.regulations.gov. See the Public Participation and Request for Comments section below for further information.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- Fax: 1-202-493-2251.

Each submission must include the Agency name and the docket number of this notice. DOT posts all comments received without change to www.regulations.gov, including personal information in a comment. Please see the Privacy Act heading below.

Docket: To read background documents or comments, go to www.regulations.gov or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS) at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: (202) 366-2722; E-mail: MCPSPD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2019-0085), the specific section of this document to which the comment applies, and provide reasons for suggestions or recommendations. You may submit online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in your document so the Agency can contact you if it has questions about your submission.

To submit your comments online, go to www.regulations.gov and put the docket number, “FMCSA-2019-0085” in the “Keyword” box, and click “Search.” When the new screen appears, click on the “Submit a Formal Comment” button and type your comment into the text box in the following screen. Indicate whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or deny this application based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish

a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

Under FMCSA's current hours-of-service (HOS) rules, drivers are not required to prepare and maintain records of duty status (RODS) provided that (among other things) they return to their normal work reporting location and are released from work within 12 hours after coming on duty (49 CFR 395.1(e)(1)). A driver who exceeds the 12-hour limit loses the short-haul exception and must immediately prepare RODS for the entire day, often by means of an electronic logging device (ELD) (49 CFR 395.8(a)(1)(i)).

NWRA represents approximately 700 publicly traded and privately-owned local, regional, national and international waste and recycling companies. These motor carriers operate more than 100,000 waste and recycling collection trucks and employ an even

greater number of CMV drivers. NWRA indicated its members represent approximately 70 percent of the private sector waste and recycling market.

The industry's fleet includes, but is not limited to, waste and recycling collection trucks, roll-off trucks, post collection tractor trailers, container delivery vehicles, and grapple trucks. Their drivers routinely qualify for the short-haul HOS exception in 49 CFR 395.1(e)(1). Waste and recycling companies operate local route service trucks with drivers starting and ending their days at the same location and their drivers rarely travel beyond a 40-mile radius from the work-reporting location.

Residential collection route trucks repeatedly stop and start while on-route in order to collect a load of waste or recyclable materials, with an average of 400 to 600 stops at residences each day. Commercial collection route trucks tend to have fewer stops than those on residential routes, but can average more than 80 stops per day at business addresses. On occasion, drivers in this industry cannot complete their duty day within 12 hours. The drivers may exceed the 12-consecutive hour limitation of the short-haul exception more than 8 times in any 30-day period due to operating restrictions placed upon the industry by States and localities, inclement weather, traffic congestion, and other circumstances beyond their control. Once they exceed the 8-in-30-day threshold, NWRA's companies must install electronic logging devices (ELDs) to document drivers's duty status (see 49 CR 395.8(a)(1)(iii)(A)(I)). Therefore, NWRA's application for an exemption to allow waste and recycling industry drivers and companies to continue to qualify for the short-haul exception, up to the 14th hour after coming on duty, would help some of petitioner's drivers avoid the economic burden of installing ELDs when they occasionally exceed the 8-in-30-day threshold for the ELD mandate.

While NWRA recognizes the safety benefits that ELDs present for other industry sectors, it claims that these devices are actually counterproductive for the waste and recycling industry due to the frequency with which these drivers must interact with them. Waste and recyclable collection CMV drivers are required to interact with and make duty status changes in the ELD or RODS when stopping at one-third to one-half of their 400 to 600 stops per day or every 22 seconds – the average time to service a customer – before then driving to the next residence, which could be less than 100 feet away.

NWRA notes that certain CMV drivers may already operate up to 14 hours without forfeiting short-haul status. Drivers in the asphalt-paving business were granted a similar exemption [83 FR 3864, Jan. 26, 2018], and 49 CFR 395.1(e)(1)(ii)(B) reflects a statutory exemption for the ready-mixed concrete industry. NWRA further notes that FMCSA recently granted one of its member companies – Waste Management Holdings, Inc. – a similar exemption [83 FR 53940, Oct. 25, 2018]. NWRA argues that granting a broader exemption would create regulatory consistency across the entire waste and recycling industry.

NWRA asserts that waste and recycling carriers have virtually no record of HOS violations in the Agency's Compliance, Safety, Accountability (CSA) Safety Measurement System (SMS) HOS BASIC scores, nor is there a history of CSA intervention consequences for HOS non-compliance with these carriers. NWRA further adds that there is no equivalent or greater level of safety that ELDs would bring to the waste and recycling industry. The waste and recycling industry recognizes and agrees with the need for ELDs for drivers and carriers in long haul, over-the-road, and regional operations, as well as for those carriers with Unsatisfactory safety ratings and that are over the threshold in their CSA HOS BASIC score. For these reasons, NWRA states that

the agency should not require CMV drivers and companies transporting waste and recyclable material to invest in ELDs by granting this exemption request.

NWRA's application for exemption is available for review in the docket referenced at the beginning of this notice.

Issued on: March 22, 2019.

Larry W. Minor,
Associate Administrator for Policy.
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